



FERCMAIL

Michelle (OER) Davis <michelle.davis@ferc.gov>

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**Fwd: FW: DOE No Comment Policy**

1 message

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(b) (6) Wed, Feb 12, 2014 at 4:01 PM  
To: (b) (6)  
Cc: (b) (6)  
(b) (6)  
(b) (6)

Forwarding 1 of 5.

----- Forwarded message -----

From: (b) (6)  
Date: Tue, Feb 11, 2014 at 4:46 PM  
Subject: FW: DOE No Comment Policy  
To: (b) (6)

[for FOIA request consideration]

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**From:** (b) (6)  
**Sent:** Tuesday, December 07, 2010 1:26 PM  
**To:** ER-3  
**Cc:** Tod Henby  
**Subject:** DOE No Comment Policy

FYI about the DOE GEN-16, "No Comment Policy for Classified Areas", I have attached below DOE staff briefing about the "No Comment" policy and a link to a classification bulletin about that policy (bottom of page 6). Essentially, when being asked about the sensitive information in the public domain, we should simply reply with "no comment".

(b) (6)

<<...>>

<http://www.hss.doe.gov/classification/news/CommuniQue200508.pdf>

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**From:** (b) (6)  
**Sent:** Tuesday, December 07, 2010 12:09 PM  
**To:** ER-3  
**Subject:** Beware - WikiLeaks

Team,

I'm sure all of you have been following the WikiLeaks story in the media as it

unfolds. The article below reminds feds to not view materials posted by WikiLeaks while on government or personal computers because the materials remain classified. I hadn't seen anything from our own Security Office on this yet, but figured I would share the article.

[http://www.nextgov.com/nextgov/ng\\_20101206\\_5274.php?oref=rss?zone=NGtoday](http://www.nextgov.com/nextgov/ng_20101206_5274.php?oref=rss?zone=NGtoday)

(b) (6)

Federal Energy Regulatory Commission  
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GEN16.ppt  
366K

# **Classification Bulletin GEN-16**

**“No Comment Policy for  
Classified Areas”**



**June 30, 2005**

**Lesley Nelson-Burns  
Policy and Quality Management Division**

# **“No Comment” Policy**

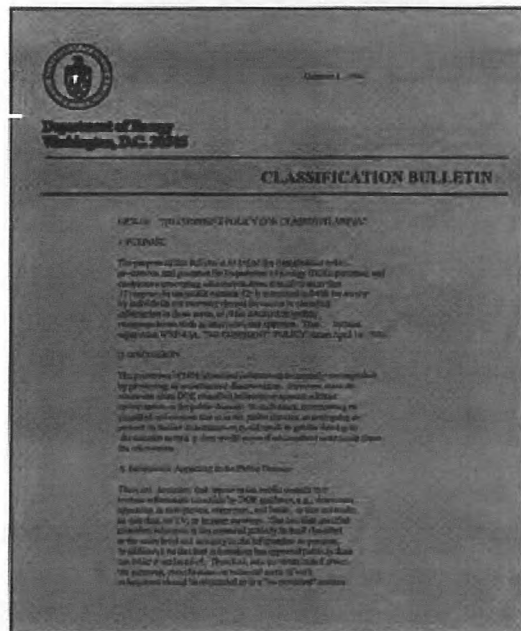


Department of Energy  
Washington, D.C. 20545

- **“No Comment” Policy Review**
- **Issues with the “No Comment” Policy**
- **The Scope of the Problem**
- **Possible Solutions**
- **Discussion**

# "No Comment" Policy

- October 1, 1986
- Applies to RD, FRD, and NSI
- Applies to:
  - Classified information
    - Appearing in public domain
  - Information in classified subject areas
    - Submitted to DOE for review by uncleared persons
    - In spoken communications



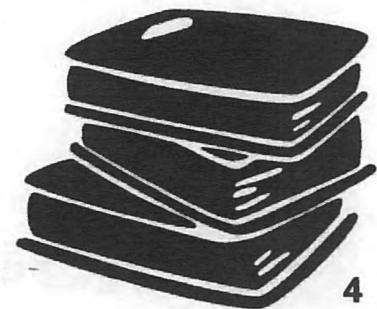


# Public Domain



- In newspapers, magazines, websites, books, speeches, TV, etc.
- No comment on accuracy, classification, or technical merit of ***classified information***
- Fact of appearance of classified information is classified at same level and category as the information

**Appearance in the public domain  
does not declassify the information**





# Documents Submitted for Review

- In a *classified subject area*
  - By individuals without a clearance
    - No comment on accuracy, classification, or technical merit of documents



- Evaluation by DOE is classified at level and category necessary, but no less than CNSI

# Spoken Communications



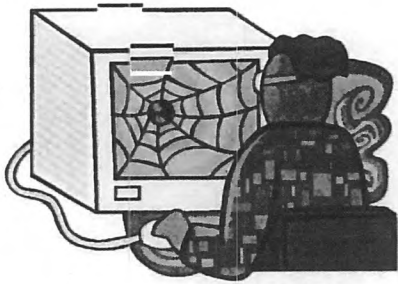
- Interviews, conversations, speeches, etc. ***in classified subject areas***
  - Should be familiar with classification guidance for subject area and the “No Comment” policy
  - Use discretion to avoid using “no comment” so that its use implies or reveals classified information



# Exceptions

- Made in consultation with and concurrence of appropriate HQ program director and Director, OCIC.
  - Comment on unclassified portions of a document that contains classified information
  - But make clear comment in no way implies an endorsement of the “overall accuracy, technical merit, or content of other aspects of the document”





# **Problem One**

## **What is Comment?**



- Surfing/downloads from a website that contains classified information?
- Sending an e-mail of a public domain source that contains classified information?
- Citation of a public domain source that contains classified information in a bibliography or footnote?
  - In subject areas of interest, does use by DOE employee imply it contains classified?
  - Footnote with page number of page with unclassified information – page may also contain classified information?
  - It may draw more attention to an authoritative source if it is NOT cited

# Problem Two

If in Public Domain, “No Comment” if classified



Public Domain + “No Comment” = **CLASSIFIED**

# Inconsistency One

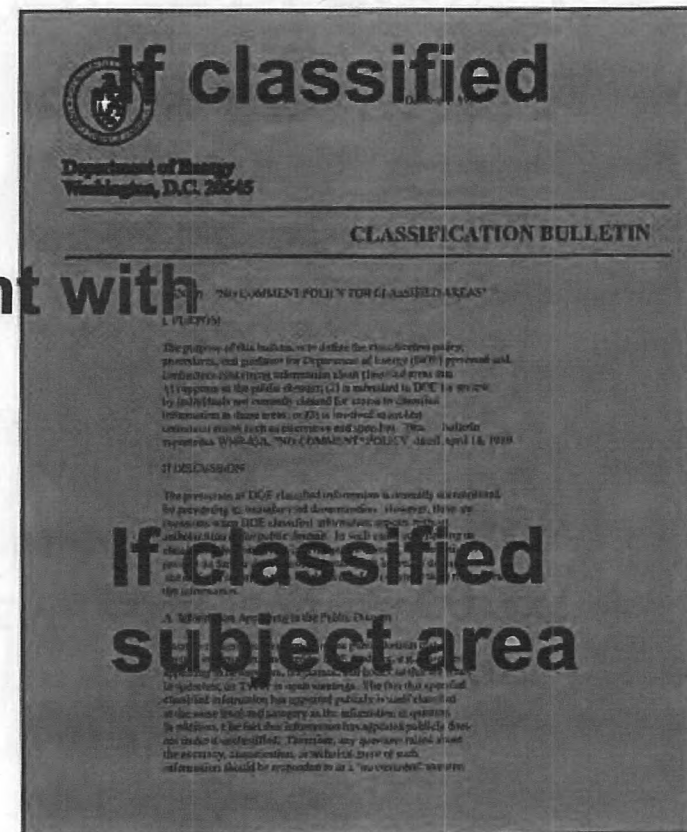
Public Domain

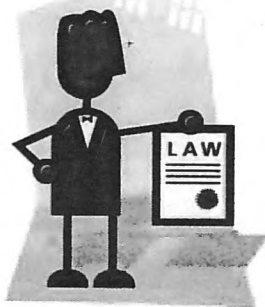


not consistent with

Submitted documents

Spoken communication





## Inconsistency Two

### 10 CFR 1045.22

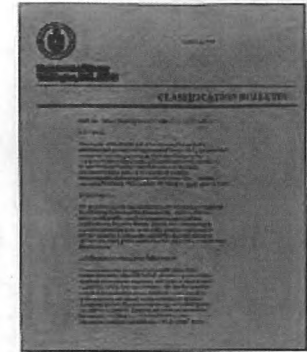


- “ a) Authorized holders of RD and FRD shall not confirm or expand on the classification status or technical accuracy of **classified information** in the public domain.
- b) Unauthorized disclosure of classified information does not automatically result in the declassification of that information.
- c) If the disclosure of classified information is sufficiently authoritative or credible, the DOE Director of Security Affairs shall examine the possibility of declassification. ”



# Inconsistency Two

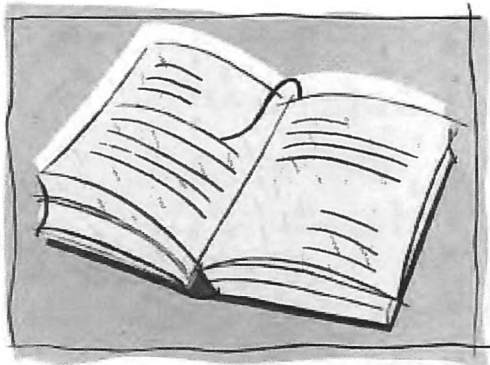
## CFR vs GEN-16



- 10 CFR 1045.22 and GEN-16
  - No comment on accuracy, classification, or technical merit of **classified information**
- GEN-16 continued
  - Comment on **unclassified portions** of a document that contains classified information made in consultation with and with the concurrence of the appropriate HQ program manager and the Director, OCIC.



# The Scope of the Problem



- Increasing amount of classified information in the public domain
- Increasing accessibility to classified information in the public domain



**Websites**  
**Newspapers**  
**Magazines**  
**Books**



## **What to do?**

- **Fine tune the “No Comment” policy?**
  - Define “comment”
  - Address e-mails, downloads
  - Address citations
- **Documents submitted for review**
  - Develop procedures for with clearance/without clearance
  - Permit local flexibility?
- **Comment = Compromise**
  - Revoke clearances if violators with a clearance knowingly violate the “No Comment” Policy?

# **“No Comment” Review**

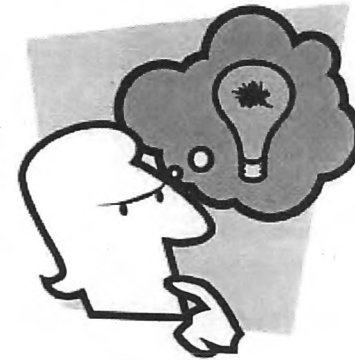
## **Current Policy**

	<b>Public Domain</b>	<b>Submitted for Review</b>	<b>Spoken Communications</b>
Applies to classified subject area	<b>N/A</b>	<b>GEN-16</b>	<b>GEN-16</b>
Applies only to classified information	<b>GEN-16</b>	<b>N/A</b>	<b>N/A</b>
No comment on classification status	<b>GEN-16</b>	<b>GEN-16</b>	<b>N/A</b>
No comment on <u>classified</u> content	<b>GEN-16</b>	<b>N/A</b>	<b>N/A</b>
No comment on <u>any</u> content	<b>N/A</b>	<b>GEN-16</b>	<b>N/A</b>

# “No Comment” Policy Changes?

	Public Domain	Submitted for Review	Spoken Communications
Allow comment on classification status at the portion level?	<b>NO</b>	<b>NO</b>	<b>NO</b>
Allow comment on classification status at the document level?	<b>No?</b>	<b>No?</b>	<b>No?</b>
Allow <u>unclassified</u> comment on <u>unclassified</u> content?	<b>?</b>	<b>?</b>	<b>Yes</b>
Allow <u>unclassified</u> comment on <u>classified</u> content?	<b>Too difficult?</b>	<b>Too difficult?</b>	<b>No?</b>

# Your Thoughts



- Does the “No Comment” policy work?



- Should we change the “No Comment” Policy?
- How should we change it?

**From:** (b) (6)  
**To:** ER-3  
**Subject:** Beware - WikiLeaks  
**Date:** Tuesday, December 07, 2010 12:09:30 PM

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Team,

I'm sure all of you have been following the WikiLeaks story in the media as it unfolds. The article below reminds feds to not view materials posted by WikiLeaks while on government or personal computers because the materials remain classified. I hadn't seen anything from our own Security Office on this yet, but figured I would share the article.

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**From:** (b) (6)  
**To:** ER-3  
**Cc:** Tod Henby  
**Subject:** DOE No Comment Policy  
**Date:** Tuesday, December 07, 2010 1:26:21 PM  
**Attachments:** GEN16.ppt

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FYI about the DOE GEN-16, "No Comment Policy for Classified Areas", I have attached below DOE staff briefing about the "No Comment" policy and a link to a classification bulletin about that policy (bottom of page 6). Essentially, when being asked about the sensitive information in the public domain, we should simply reply with "no comment".

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**From:** (b) (6)  
**Subject:** FW: for your info., OMB issues Memoranda on: (1) Mishandling of Classified Information, and (2) Plain Writing Act of 2010  
**Date:** Monday, November 29, 2010 10:16:15 AM

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f.y.i.

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**From:** (b) (6)  
**Sent:** Monday, November 29, 2010 10:14 AM  
**To:** (b) (6) Isaac Hernandez; Charles Beamon  
**Cc:** (b) (6)  
**Subject:** for your info., OMB issues Memoranda on: (1) Mishandling of Classified Information, and (2) Plain Writing Act of 2010

(b) (6) alerted us to recent OMB memoranda and guidance on: (1) Mishandling of Classified Information, and (2) Plain Writing Act of 2010. The links follow:

[M-11-06, WikiLeaks - Mishandling of Classified Information](#) (November 28, 2010)  
(1 page, 56 kb)

[M-11-05, Preliminary Guidance for the Plain Writing Act of 2010](#) (November 22, 2010)  
(3 pages, 62 kb)

[On 10/13/10, the President signed the Plain Writing Act of 2010, to promote "clear Government communication that the public can understand and use."]

[Thanks, (b) (6)]